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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE STEC, INC. SECURITIES
LITIGATION

No. SACV 09-01304-JVS (MLGx)

This Document Relates To:

ALL ACTIONS

**REPLY MEMORANDUM IN
FURTHER SUPPORT OF CLASS
REPRESENTATIVES' MOTION FOR
FINAL APPROVAL OF SETTLEMENT
AND PLAINTIFFS' COUNSEL'S
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES**

Hearing Date: May 20, 2013
Time: 1:30 p.m.
Judge: Honorable James V. Selna
Courtroom: 10C

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1 Lead Plaintiff State of New Jersey, Department of Treasury, Division of
 2 Investment (“New Jersey” or “Lead Plaintiff”), representative plaintiffs
 3 International Brotherhood of Electrical Workers, Local 103 (“Local 103”) and
 4 Norfolk County Retirement System (“Norfolk County”) (together with Lead
 5 Plaintiff, “Plaintiffs”) and plaintiff Dr. Mark V. Ripperda (collectively, with
 6 Plaintiffs, the “Class Representatives”), respectfully submit this reply
 7 memorandum in further support of Class Representatives’ Motion for Final
 8 Approval of Proposed Class Action Settlement, Plan of Allocation, and Class
 9 Certification (ECF No. 382) and Plaintiffs’ Counsel’s Motion for an Award of
 10 Attorneys’ Fees and Payment of Expenses (ECF No. 384).¹

11 **PRELIMINARY STATEMENT**

12 Class Representatives and Co-Lead Counsel are pleased to advise the Court
 13 of the overwhelmingly positive reaction of the Class to the proposed Settlement.
 14 There are *no* objections to the proposed Settlement and *only one* objection to the
 15 proposed Plan of Allocation, which as set forth below, has been resolved and the
 16 objection is moot. There are *no* objections to Plaintiffs’ Counsel’s request for an
 17 award of attorneys’ fees and payment of litigation expenses.² There are also no
 18 objections to Class Representatives’ request for reimbursement of their expenses.

19 Additionally, although notice packets - consisting of the Notice and Proof of
 20 Claim or Notice- have been mailed to 126,879 potential Class Members or their
 21 nominees, there have been *only two* timely and valid requests for exclusion. *See*
 22

23
 24 ¹ All capitalized terms used herein are defined in the Declaration of Thomas
 25 A. Dubbs in Support of Class Representatives’ Motion for Final Approval of
 26 Proposed Class Action Settlement (“Dubbs Declaration” or “Dubbs Decl.”) (ECF
 27 No. 386) and are consistent with the terms of the Stipulation and Agreement of
 28 Settlement (“Stipulation”) (ECF No. 328-1).

² The law firm of Bernstein Litowitz Berger & Grossman LLP (“BLBG”) filed a motion for an award of attorneys’ fees and reimbursement of litigation expenses (ECF No. 376). There has been one objection to BLBG’s motion. *See* Ex. A annexed to the accompanying Declaration of James W. Johnson (“Johnson Declaration” or “Johnson Decl.”).

1 Supplemental Affidavit of Jose C. Fraga Regarding (A) Mailing of Notice and
2 Proof of Claim; (B) Requests for Exclusion; and (C) Objections ¶¶ 2, 4
3 (“Supplemental Affidavit”) submitted as Exhibit B to the Johnson Declaration.
4 These results are a clear testament to the fairness, adequacy, and reasonableness of
5 the proposed Settlement, the proposed Plan of Allocation, and Plaintiffs’ Counsel’s
6 attorneys’ fee and expense request.

7 As set forth in the previously filed Affidavit of Jose C. Fraga Regarding (A)
8 Mailing of the Notice and Proof of Claim; (B) Publication of the Summary Notice;
9 and (C) Requests for Exclusion Received to Date (“Mailing Affidavit”) (ECF No.
10 386-2), the Court-appointed Claims Administrator in this matter, The Garden City
11 Group, Inc. (“GCG”), provided notice of the proposed Settlement in accordance
12 with the Court’s Preliminary Approval Order. As of May 1, 2013 a total of
13 126,879 Notices were mailed to potential Class Members and nominees. *See*
14 Supplemental Affidavit ¶ 2. In addition, also in accordance with the Court’s
15 Preliminary Approval Order, the Summary Notice was published in *Investor’s*
16 *Business Daily* and transmitted over the *PR Newswire* on March 8, 2013. *See*
17 Mailing Affidavit ¶ 7.

18 The Notice set out, among other things, the essential terms of the Settlement
19 and informed Class Members of their right to seek exclusion from the Class or to
20 object to any aspect of the Settlement. *See* ECF No. 386-2. As stated in the Notice
21 and directed by the Court in the Preliminary Approval Order, any objections to the
22 Settlement, the Plan of Allocation, or applications for an award of attorneys’ fees
23 and payment of litigation expenses, or exclusion requests were required to be
24 received or postmarked on or before April 22, 2013. That deadline has now
25 passed.

ARGUMENT

I. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND THE PLAN OF ALLOCATION

Class Representatives respectfully submit that their opening papers in support of the motion for final approval of the proposed Settlement and the proposed Plan of Allocation amply demonstrate that the motion should be granted. Now that the time for objecting or requesting exclusion from the Class has passed, the reaction of the Class also strongly supports approval.

The reaction of a class to a settlement is a significant factor in assessing its fairness and adequacy. Indeed, “the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, *not a single* Class Member has objected to the Settlement. The complete absence of objections to a settlement “speaks volumes with respect to the overwhelming[ly] degree of support for the Proposed Settlement among the Class Members. That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable and adequate.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 529. *See also Omnivision*, 559 F. Supp. at 1043 (class “nearly silent” where three potential class members objected and noting “[b]y any standard, the lack of objection of the Class Members favors approval of the Settlement”).

In addition, there has been *only one* objection (described below) to the proposed Plan of Allocation, which has been resolved. As set forth in Class Representatives’ opening papers, just like the standard for approval of the Settlement as a whole, the Plan of Allocation must be fair, reasonable, and adequate. *See Atlas v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-

1 H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (“The adequacy of a
 2 plan of allocation is governed by the same standards of review applicable to the
 3 settlement as a whole-the plan must be fair, reasonable, and adequate.”). Here, Co-
 4 Lead Counsel has expressed its belief that the Plan of Allocation, which was
 5 prepared with the assistance of a consulting damages expert, is fair and reasonable.
 6 *See* ECF No. 386 ¶ 280. This reaction provides additional strong support for the
 7 approval of the Plan of Allocation. *See Atlas*, 2009 WL 3698393, at *4 (noting the
 8 “predominantly positive response” to the plan of allocation where only two
 9 objections to it were submitted).

10 Similarly, the fact that *only two* valid and timely requests for exclusion have
 11 been received (*see* Supplemental Affidavit ¶ 4), further supports the fairness,
 12 reasonableness, and adequacy of the Settlement. *See, e.g., In re TD Ameritrade*
 13 *Account Holder Litig.*, No. 07-2852 SBA, 2011 WL 4079226, at *7 (N.D. Cal.
 14 Sept. 13, 2011) (“Given the relatively small number of objections and opt-outs, the
 15 Court finds that the reaction of the class to the settlement is positive, which favors
 16 approving the Settlement.”).

17 **II. THE OBJECTION TO THE PLAN OF ALLOCATION** 18 **HAS BEEN RESOLVED**

19 Jordan Grayson, Managing Partner of Outpoint Capital Management
 20 (“Outpoint”), filed an objection to the Plan of Allocation. ECF No. 390. In sum,
 21 Outpoint sold 7,000 shares of STEC stock after the close of trading and after
 22 issuance of the final corrective disclosure on February 23, 2010 – the last day of
 23 the Class Period. However, the sale price received by Outpoint for its after hours
 24 trade on February 23rd of \$9.7409 is consistent with the range of the trading prices
 25 of STEC stock on February 24, 2010 of \$9.47 to \$10.53.

26 Under the Plan of Allocation, claimants such as Outpoint who purchased
 27 STEC stock between November 4, 2009 and February 23, 2010 and sold prior to
 28 February 24, 2010, have a Recognized Loss of zero. *See* ECF No. 386-2 at 19

(Notice). This allocation in the Plan of Allocation was designed to encompass claimants who sold *prior to* the close of trading on February 23, 2010, but not claimants who sold after the close of trading on February 23 and after the issuance of the final corrective disclosure.

Under the facts and circumstances set forth by Outpoint, Lead Plaintiff, its damages expert who developed the Plan of Allocation and the Claims Administrator all believe that it is equitable to treat claimants who sold STEC common stock on: (a) November 3, 2009 after the close of trading and after the issuance of the partial corrective disclosure as having sold on November 4, 2009; and (b) February 23, 2010 after the close of trading and after the issuance of the final corrective disclosure as having sold on February 24, 2010. *See Johnson Decl.* ¶ 3. Under this interpretation, Outpoint and similarly-situated claimants will have a Recognized Loss and will be eligible to receive a distribution from the Settlement Fund.

The Plan of Allocation, with the approval of the Court, will be amended³ as follows:

STEC common stock sold on November 3, 2009 after the close of trading and after the issuance of the partial corrective disclosure will be treated for purposes of the Plan of Allocation as having been sold on November 4, 2009.

STEC common stock sold on February 23, 2010 after the close of trading and after issuance of the final corrective disclosure will be treated for purposes of the Plan of Allocation as having been sold on February 24, 2010.

A [Proposed] Amended Order Approving Plan of Allocation is submitted herewith.

³ As set forth in the Notice, the Plan of Allocation may be modified without additional notice to the Class. The modification will be posted on the websites of the Claims Administrator and Co-Lead Counsel. *See* ECF No. 386-2 at 16 (Heading No. 25).

1 **III. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF**
 2 **PLAINTIFFS' COUNSEL'S REQUEST FOR ATTORNEYS' FEES**
 3 **AND PAYMENT OF EXPENSES**

4 Not one Class Member has objected to Plaintiffs' Counsel's motion for an
 5 award of attorneys' fees and expenses. The fact that there have been no objections
 6 is strong evidence that the requested fee is fair and reasonable. *See, e.g., In re*
 7 *Nuvelo, Inc. Sec. Litig.*, No. C 07-04056 CRB, 2011 WL 2650592, at *3 (N.D. Cal.
 8 July 6, 2011) (only one member objected to the fee and expense award which the
 9 court considered a "strong, positive response from the class"); *Omnivision*, 559 F.
 10 Supp. 2d at 1048 ("None of the objectors raised any concern about the amount of
 11 the fee. This factor . . . also supports the requested award of 28% of the Settlement
 12 Fund."); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal.
 13 2007) ("the lack of objection from any Class Member supports the attorneys' fees
 14 award"); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at
 15 *16 (C.D. Cal. June 10, 2005) ("the lack of significant objections to the requested
 16 fees justified an award of one-third of the Settlement Fund"). There have also been
 17 no objections to Plaintiffs' Counsel's request for payment of its expenses. *See In*
 18 *re Nuvelo*, 2011 WL 2650592, at *3. Additionally, there have been no objections
 19 to Class Representatives' request for reimbursement of their expenses.

20 **CONCLUSION**

21 For the reasons set forth herein and in Class Representatives' and Plaintiffs'
 22 Counsel's initial memoranda of points and authorities and declarations in support,
 23 Class Representatives and Plaintiffs' Counsel respectfully request that this Court
 24 grant final approval to the proposed Settlement; approve the Plan of Allocation of
 25 the Net Settlement Fund; grant final class certification of the claims under the
 26 Securities Act, for settlement purposes; grant final certification of Mark Ripperda
 27 as a Class Representative for the Class; approve Plaintiffs' Counsel's request for
 28 attorneys' fees and payment of litigation expenses (including those incurred by
 Class Representatives); and enter the proposed Orders submitted herewith.

1 Dated: May 6, 2013

Respectfully submitted,

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3
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